

head of the agency responsible for the undertaking.

**§ 800.11 Documentation standards.**

(a) *Adequacy of documentation.* The Agency Official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. When an Agency Official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the Agency Official and specify the information needed to meet the standard. At the request of the Agency Official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the Agency Official and the consulting parties.

(b) *Format.* The Agency Official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality*—(1) *Authority to withhold information.* Section 304 of the Act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the Act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to the criteria above, the Secretary, in consultation with such Federal agency head or official, shall determine whom may have access to the information for the purpose of carrying out the Act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the Section 106 process and may authorize the Agency Official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties.

(5) An explanation of why the criteria of adverse effect were found applicable

or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of Agreement.* When a Memorandum of Agreement is filed with the Council, the documentation shall include any substantive revisions or additions to the documentation provided the Council pursuant to §800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a Memorandum of Agreement.* Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the Agency Official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to §800.6(a)(1).

#### **§800.12 Emergency situations.**

(a) *Agency procedures.* The Agency Official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government or the governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an Agency Official pro-

poses an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government or the governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to §800.12(a), the Agency Official may comply with section 106 by:

(1) Following a Programmatic Agreement developed pursuant to §800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the Agency Official determines that circumstances do not permit seven days for comment, the Agency Official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the Agency Official for section 106 compliance, §800.12 (a) and (b) also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the Agency Official shall comply with §§800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.